

Approved Minutes
Friend of the Court Bureau
Advisory Committee Meeting
State Court Administrative Office - Lansing, MI
Thursday, August 8, 2002

MEMBERS PRESENT: Hon. Mabel Mayfield, Susan Licata Haroutunian, Lynn Bullard, Murray Davis, Patti Holden, Linda Cunningham, William Brooks, and Gail Schneider-Negrinelli

MEMBERS ABSENT: David Meyers and Anthony Paruk

STAFF PRESENT: Bill Bartels, Darla Brandon, Bill Newhouse and Ron Kollen

PUBLIC ATTENDANCE: None

The Advisory Committee was introduced to Bill Newhouse, Assistant Director of Trial Court Services, and Ron Kollen, Management Analyst in the Friend of the Court Bureau. They both provided the Committee with an update of the transitions going on due to the State budget with respect to the State Court Administrative Office (SCAO).

1. CALL TO ORDER

The meeting was called to order by Susan Haroutunian at 9:45 a.m.

2. ROUTINE BUSINESS

a. Approval of the April 18, 2002 Minutes

A motion was made to approve the April 18, 2002 meeting minutes with the following corrections: (1) remove Linda Cunningham from the Members Present list, and (2) on page three, under role of the Advisory committee, the two occurrences of "it's" needs the apostrophe removed.

Motion Passed.

b. Correspondence None.

c. Public Comment None.

d. Subcommittee Reports

i. FSC Meeting minutes - Mr. Bartels stated that the Committee was e-mailed the July subcommittee meeting minutes and today were being provided with their minutes of May and June to review.

e. Legislative Update

i. Information Only - the committee was provided with a legislative update with respect to the Friend of the Court related legislation for review.

f. Bureau Update

i. Filling Advisory Committee Vacancies - In October, 2002 there will be an attorney member and a human services professional member vacancies on the advisory committee. In early August, a press release was issued by the Supreme Court looking for applicants to fill the vacancies. Since statute requires that statewide advisory committee members be members of a local citizen advisory committee, a memo was provided to the active counties Board Chairperson and/or the County Administrator requesting that they provide copies to members who are domestic relations attorneys or human service professionals. The closing date is August 31, 2002.

The committee discussed that many counties, such as Wayne County, do not have a CAC. Mr. Kollen commented that efforts are being made to amend this statute. This will be tabled to the October meeting.

3. UNFINISHED BUSINESS

a. Changes to existing formula manual

Mr. Bartels provided a list of known topics related to the manual that the advisory committee needs to consider. The committee was asked if they wanted to add any items to the list, or if they wanted decide to review them in a different order.

Ms. Haroutunian noted that there needed to be a means to adjust orders when the shared economic responsibility calculation is used, and a significantly different pattern of parenting time occurs. After some discussion, the committee wanted the bureau to draft recommended text that allows for adjustment support when the parenting/custodial time exercised significantly differs from the number of overnights used to order support. The committee provided the following parameters: (a) a significant difference between overnights used to calculate support and the parental/custodial overnights exercised within a calendar year is [triggering number to be designated (likely 14- 21 overnights)], (b) if the support payer exercises a significantly greater number of overnights, the support adjustment will be 50% of the daily support for the additional number of overnights exercised, (c) if the support payer exercises significantly fewer overnights, the support adjustment will be the difference between the base support amount (no SER) and the amount ordered for the difference in number of overnights exercised and the order, (c) the administrative adjustment of support amounts for significantly different parenting/custodial time will be calculated for an entire calendar year and processed by the friend of the court office, (d) support orders must contain provisions allowing for annual adjustments (similar to parenting time adjustments) by the friend of

the court office, (e) the office can administratively adjust the annual amount in the same manner that parenting time credits are currently given (notice, objection, etc.) and (f) a party desiring a parenting/custodial time adjustment before the end of the calendar year due to a significant difference in the time exercised must petition to modify the support order.

Later in the meeting as part of the Shared Economic Responsibility changes, the committee changed from wanting the section being drafted by the bureau to passing a recommendation that it be added to the manual.

i. Citation and Reorganization - Mr. Bartels presented a slide show regarding organization and referencing the manual. Prior to the meeting, the committee was provided with MCSFcitation.pdf and MCSFreorgOutline.pdf documents via the web. Currently there is not a uniform way of citing the formula manual, and some contents appear out of sequence. Ms. Haroutunian made a motion recommending: (1) add a section on citation to the Michigan Child Support Formula Manual, (2) the manual be cited by a number system modeled after the Michigan Court Rules and includes the revision year, (3) the contents of the manual be reorganized into chapters, sections, and provisions in a more logical sequence, and (4) separate each idea/provision into its own numbered section or subsection; and that the citation section and numbering system follow the draft presented by the Friend of the Court Bureau. Mr. Brooks seconded the motion. **Motion Passed.**

iv. Alimony/Spousal Support Adjustments to Income

At their January 8, 2002 meeting, the Child Support Formula Subcommittee recommended changing the formula to calculate child support without regard to alimony/spousal support paid between the parties of the case under consideration. The committee was provided with the recommendation and rationale approved by the subcommittee Alimony-FSC02-2-12.pdf via the web.

Following a discussion of the materials, a motion was made to accept the changes to calculate child support without regard to alimony/spousal support paid between the parties of the case under consideration as recommended by the subcommittee.

Section II A type of income 29 of the 2001 formula manual should be modified to read:

"29. Alimony/Spousal Support paid by someone other than the other parent of the case under consideration."

2001 manual Section II K allowable deduction from income #1 should be modified to read:

"1. Alimony/Spousal Support

Any alimony/spousal support paid to someone other than the other parent of the case under consideration should be deducted prior to the calculation and any deduction of federal, state and local

income taxes. The calculation of social security taxes (FICA) is based on gross income before deduction of the alimony/spousal support order."

Motion Passed.

vii. Deviation - clarify effects of Burba case

At their February 12, 2002 meeting, the Child Support Formula Subcommittee recommended changing the deviation section of the formula to clarify the effects of the Burba case. The committee was provided with the subcommittee's recommendation and a rationale Deviation-FSC02-2-12.pdf via the web. Following a discussion of the materials, a motion was made and seconded recommending modification of the 2001 manual Section I A Application of and Deviation from the Formula to include the following paragraph at the end of the section:

"The Michigan Supreme Court has further clarified that deviations cannot be based simply on disagreement with the policies embodied in the statutes or the manual. In *Burba v Burba*, 461 Mich 637 (2000), the court reversed an order deviating from the formula where the trial court indicated that the basis of its deviation was simply that it did not follow the formula when income disparities amount the parties were great. In reversing, the Court found that the manual dealt directly with income disparities in the formula, and held in effect that the simple disagreement with the policies implicit in the formula cannot be the basis for a deviation. It therefore appears that the only basis for deviation from the formula is a finding that application of the policies would be unjust and inappropriate in that specific case, including a discussion of the factors that make the case unusual, and how those factors make application of the formula unjust or inappropriate."

Motion Passed.

ii. Shared Economic Responsibility

Mr. Davis stated his fundamental opposition to the income shares model, and stated that he objected to the use of any threshold because, in his opinion, thresholds were unjust or inequitable. Mr. Davis made a motion to send the issue of the shared economic threshold back to the subcommittee to be reworked. The motion was seconded by Dr. Brooks. Following discussion on the motion, the committee voted. **Motion Failed.**

(3) Retroactive Language Effect

Based upon Item C on Mr. Davis' 4/1/8/02 memo and several other communications regarding interpretation of the retroactive application language, Mr. Bartels drafted recommended language (SERlaterapplication.pdf) to clarify the meaning of the provision, which was provided to the committee via the web. The changes must allow modification when there are changed circumstances, and not limited to initial custody/parenting time orders or modification of those orders. The committee did not want a manual text change to be the only grounds supporting modification. Also the committee thought that orders should be changed only from the date the other party is served with notice of the proposed change.

A motion was made and seconded recommending that the first paragraph of Section IV B Shared Economic Responsibility from the Formula (2001 CSF Manual) be modified to include the changes as presented by the bureau.

“The shared economic formula should only be used if it can be determined from the specific terms of the custody/parenting time order that the children will be with that parent for at least the 128 overnight threshold. The economic sharing formula applies to support orders entered concurrent with a custody/parenting time determination or modification of custody/parenting time based upon changed circumstances, and not retroactively applied to existing support orders in a manner inconsistent with MCL 552.603(2).”

Motion Passed.

Mr. Bartels had provided a document (SERcubingssummary.pdf) to the advisory committee via the web that summarizes the issues related to the proposed shared economic responsibility changes. Mr. Bartels gave a presentation that included a slide show that summarized what the subcommittee had proposed as well as other considerations.

The idea of shared economic responsibility is founded on the following assumptions: (1) When a child stays with the other parent, the custodial parent spends less for the child. (2) The time a parent spends with a child correlates to that parent’s direct expenditure on the child (clothes, activity fees, etc.). (3) The support payer should receive some monetary relief to offset the costs associated with parenting time. (4) The custodial parent’s costs are not reduced 100% during parenting time. (5) When both parent’s incomes and time spent caring for the child are equal, support should be zero.

Currently, more issues and complaints occur related to the shared economic responsibility section, than any other provision in the manual. Changing this section should both eliminate the economic incentive (“cliff”) for disputing small changes in parenting time, and minimize administration of adjusting support for parenting time’s impact on courts

(1) Formula Subcommittee Recommendations

At their July 9, 2002 meeting, the Child Support Formula Subcommittee recommended changing the Shared Economic Responsibility (SER) section of the formula manual to: (1) cube instead of squaring the numbers, and (2) lowering the threshold at which the SER calculation applies from 128 to 105 overnights.

(2) Other Considerations

The subcommittee had discussed the need for adjustments when parenting time exercised differs from the basis of the support order. The committee looked at how parenting time abatements currently effect the annual amount of support paid.

A motion was made and seconded recommending Section IV B Shared Economic Responsibility from the Formula (2001 CSF Manual) be modified to: (1) cube instead of squaring the numbers, (2) lowering the threshold at which the SER calculation applies from 128 to 52 overnights, and (3) allow for adjustment support amounts when the parenting/custodial time exercised significantly differs from the number of overnights used to order support as detailed earlier in the meeting. **Motion Passed.**

The committee agreed to defer review items iii) Health Care/Medical Support, v) Low Income Changes, and vi) Imputation Section Changes until the next meeting.

b. Role of Advisory Committee

i. Change Statement of Purpose - A motion was made and seconded to change the statement of purpose to reflect that the committee advises the bureau "in its performance of its duties under the Friend of the Court Act" and removing "regarding issues and concerns members have relating to Friend of the Court operations and practice."

Motion Passed.

4. NEW BUSINESS

a. FOC Member Roles - By Laws

Mr. Bartels questioned how the friend of the court members are appointed. There is nothing in the statute about friends of the court being on the committee. Mr. Bartels will provide draft language to amend the bylaws to include two non-voting friend of the court members with unlimited terms designated by the Friend of the Court Association (FOCA) for review to the committee at the next meeting.

5. CLOSING

a. Members Closing Comments - None.

b. Final Public Comment - None.

c. Next Meeting Date - **October 10, 2002**

d. Adjourn - The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Darla Brandon
Trial Court Services